

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11 Case No.  
LEHMAN BROTHERS HOLDINGS INC., *et al.* : 08-13555 (JMP)  
Debtors. : (Jointly Administered)  
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ORDER GRANTING SUPPLEMENTAL APPLICATION  
OF THE DEBTORS PURSUANT TO SECTIONS 327(e) AND 328  
OF THE BANKRUPTCY CODE AND RULE 2014 OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE FOR AUTHORIZATION TO  
MODIFY THE TERMS OF COMPENSATING AND REIMBURSING FOSTER  
GRAHAM MILSTEIN & CALISHER, LLP AS SPECIAL COUNSEL TO THE  
DEBTORS, EFFECTIVE AS OF MARCH 1, 2011

Upon the Supplemental Application, dated September 9, 2011 (the “Supplemental Application”), of Lehman Brothers Holdings Inc., as debtor in possession (“LBHI”) and its affiliated debtors in the above-referenced chapter 11 cases (together with LBHI, the “Debtors”), pursuant to sections 327(e) and 328 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order authorizing and approving the modification of the terms for compensating and reimbursing Foster Graham as special counsel to the Debtors, effective as of March 1, 2011, solely with respect to those services subject to the Modified Fee Agreement,<sup>1</sup> all as more fully described in the Supplemental Application; and upon the affidavit of Michael Milstein (the “Milstein Affidavit”), annexed as Exhibit A to the Supplemental Application; and the Court having jurisdiction to consider the Supplemental Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for

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<sup>1</sup> Capitalized terms that are used but not defined in this Order have the meanings ascribed to them in the Seventh Supplemental Application.

the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Supplemental Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Supplemental Application having been provided in accordance with the procedures set forth in the Second Amended Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures [ECF No. 9635] to (i) the United States Trustee for the Southern District of New York; (ii) the attorneys for the Official Committee of Unsecured Creditors; (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the United States Attorney for the Southern District of New York; and (vi) Foster Graham, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Supplemental Application is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Supplemental Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Supplemental Application is approved as set forth herein; and it is further

ORDERED that pursuant to section 327(e) of the Bankruptcy Code, the Debtors are hereby authorized to modify the terms of compensating and reimbursing Foster Graham as special counsel to the Debtors with respect to the Loss Recovery Litigation against Non-Correspondents, effective as of March 1, 2011, on the terms set forth in the Supplemental Application, the Modified Fee Agreement and this Order; and it is further

ORDERED that Foster Graham shall apply for compensation for the portion of its hourly fees and reimbursement of expenses in accordance with the procedures set forth in sections

330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules, the Local Rules and orders of the Court, guidelines established by the U.S. Trustee, and such other procedures that have been or may be fixed by order of this Court, including but not limited to the Court's Fourth Amended Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals [ECF No. 15997], the Court's Order Amending the Fee Protocol [ECF No. 15998] and General Order M-389; and it is further

ORDERED that the contingency component of the Modified Fee Agreement is hereby approved and Foster Graham shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code, and not subject to any other standard of review under section 330 of the Bankruptcy Code; and it is further

ORDERED that, notwithstanding the foregoing, the United States Trustee retains all rights to object to any contingency fees payable to Foster Graham based on the reasonableness standard provided for in section 330 of the Bankruptcy Code; *provided, however,* that the number of hours expended by Foster Graham shall not be the determinant of such reasonableness; and it is further

ORDERED that to the extent this Order is inconsistent with the Supplemental Application, this Order shall govern; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York  
October 5, 2011

s/ James M. Peck  
Honorable James M. Peck  
United States Bankruptcy Judge